

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ARCHER AND WHITE SALES, INC.,

Plaintiff,

V.

HENRY SCHEIN, INC., DANAHER CORPORATION, INSTRUMENTARIUM DENTAL INC., DENTAL EQUIPMENT LLC, KAVO DENTAL TECHNOLOGIES, LLC, DENTAL IMAGING TECHNOLOGIES, CORPORATION, PATTERSON COMPANIES, INC., BENCO DENTAL SUPPLY CO.,

Defendants.

[illegible]

CIVIL ACTION NO. 2:12-CV-00572-JRG

ORDER

On January 13, 2020, the Court held a hearing to address Defendants Henry Schein, Inc.; Danaher Corporation; Instrumentarium Dental Inc.; Dental Equipment LLC; Kavo Dental Technologies, LLC; Dental Imaging Technologies, Corporation; Patterson Companies, Inc.; and Benco Dental Supply Co.’s (collectively, the “Defendants”) Joint Sealed Motion to Exclude the Testimony of Plaintiff Archer and White Sales, Inc.’s (“Archer”) Expert Witnesses (the “Motion”) (Dkt. No. 298). This Order memorializes the Court’s ruling as announced into the record. This Order summarizes the Court’s rulings during the aforementioned hearing but does not limit or constrain the Court’s rulings from the bench.

Accordingly, it is hereby **ORDERED** that the Motion is **DENIED-IN-PART** and **GRANTED-IN-PART**. The Court **GRANTED** the Motion as to the portion of Drs. Stephen Magee and Devrim Ikizler’s Amended Expert Report which pertained to sales of “consumables.” The Court finds no reliable methodology or evidentiary basis which supports Magee and Ikizler’s

calculation of damages for lost sales of “consumables.” The named experts’ opinions on damages for such lost sales are based upon either Dynamic Dental’s exclusion from a purchasing cooperative, in which case Archer lacks standing, or they relate to claims of lost sales where there is no evidence of direct prior sales of “consumables” by Archer and no basis other than speculation upon which Archer can assert a reliable damages calculation for lost sales. In either case, such asserted damages relating to lost sales of “consumables” are properly excluded and struck. The Motion was **DENIED** in all other respects.

So ORDERED and SIGNED this 14th day of January, 2020.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE